

104TH CONGRESS
1ST SESSION

S. 164

To require States to consider adopting mandatory, comprehensive, Statewide one-call notification systems to protect natural gas and hazardous liquid pipelines and all other underground facilities from being damaged by excavations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 5, 1995

Mr. BRADLEY (for himself, Mr. SPECTER, Mr. LAUTENBERG, and Mr. EXON) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To require States to consider adopting mandatory, comprehensive, Statewide one-call notification systems to protect natural gas and hazardous liquid pipelines and all other underground facilities from being damaged by excavations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Comprehensive One-
5 Call Notification Act of 1995”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) DAMAGE.—The term “damage” means—

2 (A) impact or contact with an underground
3 facility, its appurtenances, or its protective
4 coating; or

5 (B) weakening of the support for the facil-
6 ity or protective housing that requires repair.

7 (2) EXCAVATION.—The term “excavation”—

8 (A) means an operation in which earth,
9 rock, or other material in the ground is moved,
10 removed, or otherwise displaced by means of a
11 mechanized tool or equipment or by means of
12 an explosive; but

13 (B) does not include—

14 (i) a generally accepted normal agri-
15 cultural practice or activity taken in sup-
16 port of such a practice, as determined by
17 each State, including tilling of the soil for
18 agricultural purposes to a depth of 18
19 inches or less;

20 (ii) a generally accepted normal lawn
21 and garden activity, as determined by each
22 State;

23 (iii) the excavation of a gravesite in a
24 cemetery; or

1 (iv) such routine railroad maintenance
2 as such maintenance would disturb the
3 ground to a depth of no more than 18
4 inches, as measured from the surface of
5 the ground, in accordance with rules ad-
6 hered to by a railroad requiring under-
7 ground facilities other than its own to be
8 buried 3 feet or lower on its property or
9 along its right-of-way.

10 (3) EXCAVATOR.—The term “excavator” means
11 a person that conducts excavation.

12 (4) FACILITY OPERATOR.—The term “facility
13 operator” means a person that operates an under-
14 ground facility.

15 (5) HAZARDOUS LIQUID.—The term “hazard-
16 ous liquid” has the meaning stated in section
17 60101(a)(4) of title 49, United States Code.

18 (6) NATURAL GAS.—The term “natural gas”
19 has the meaning given the term “gas” in section
20 60101(a)(2) of title 49, United States Code.

21 (7) PERSON.—The term “person” includes an
22 agency of Federal, State, or local government.

23 (8) ROUTINE RAILROAD MAINTENANCE.—The
24 term “routine railroad maintenance” includes such
25 activities as ballast cleaning, general ballast work,

1 track lining and surfacing, signal maintenance, and
2 replacement of crossties.

3 (9) SECRETARY.—The term “Secretary” means
4 the Secretary of Transportation.

5 (10) STATE.—The term “State” has the mean-
6 ing stated in section 60101(a)(20) of title 49, Unit-
7 ed States Code.

8 (11) STATE PROGRAM.—The term “State pro-
9 gram” means the program of a State to establish or
10 maintain a one-call notification system.

11 (12) UNDERGROUND FACILITY.—The term
12 “underground facility”—

13 (A) means an underground line, system, or
14 structure used for gathering, storing, transmit-
15 ting, or distributing oil, petroleum products,
16 other hazardous liquids, natural gas, commu-
17 nication, electricity, water, steam, sewerage, or
18 any other commodity that the Secretary deter-
19 mines should be included under the require-
20 ments of this Act; but

21 (B) does not include a portion of a line,
22 system, or structure if the person that owns or
23 leases, or holds an oil or gas mineral leasehold
24 interest in, the real property in which that por-
25 tion is located also operates, or has authorized

1 the operation of, the line, system, or structure
2 only for the purpose of furnishing services or
3 materials to that person, except to the extent
4 that that portion—

5 (i) contains predominantly natural gas
6 or hazardous liquids; and

7 (ii)(I) is located within an easement
8 for a public road (as defined under section
9 101(a) of title 23, United States Code), or
10 a toll highway, bridge, or tunnel (as de-
11 scribed in section 129(a)(2) of that title);

12 or

13 (II) is located on a mineral lease and
14 is within the boundaries of a city, town, or
15 village.

16 **SEC. 3. NATIONWIDE TOLL-FREE NUMBER SYSTEM.**

17 Within 1 year after the date of enactment of this Act,
18 the Secretary shall, in consultation with the Federal Com-
19 munications Commission, facility operators, excavators,
20 and one-call notification system operators, provide for the
21 establishment of a nationwide toll-free telephone number
22 system to be used by State one-call notification systems.

23 **SEC. 4. STATE PROGRAMS.**

24 (a) CONSIDERATION.—

1 (1) IN GENERAL.—Each State shall consider
2 whether to adopt a comprehensive statewide one-call
3 notification program with each element described in
4 section 5, to protect all underground facilities from
5 damage due to any excavation.

6 (2) NEW OR EXISTING PROGRAM.—A State pro-
7 gram may be provided for through the establishment
8 of a new program or through modification or im-
9 provement of an existing program, and may be im-
10 plemented by a nongovernmental organization.

11 (b) PROCEDURES.—

12 (1) NOTICE AND HEARING.—State consider-
13 ation under subsection (a) shall be undertaken after
14 public notice and hearing and shall be completed
15 within 3 years after the date of enactment of this
16 Act.

17 (2) PART OF GENERAL PROCEEDING.—Such
18 consideration may be undertaken as part of any pro-
19 ceeding of a State with respect to the safety of pipe-
20 lines or other underground facilities.

21 (c) COMPLIANCE.—If a State fails to comply with the
22 requirements of subsection (a), the Secretary or any per-
23 son aggrieved by such failure may in a civil action obtain
24 appropriate relief against any appropriate officer or entity

1 of the State, including the State itself, to compel such
2 compliance.

3 (d) APPROPRIATENESS.—Nothing in this Act pro-
4 hibits a State from making a determination that it is not
5 appropriate to adopt a State program described in section
6 5, pursuant to its authority under otherwise applicable
7 State law.

8 **SEC. 5. ELEMENTS OF STATE PROGRAM.**

9 (a) IN GENERAL.—Each State’s consideration under
10 section 4(a) shall include consideration of program ele-
11 ments that—

12 (1) provide for a one-call notification system or
13 systems that shall—

14 (A) apply to all excavators and to all facil-
15 ity operators;

16 (B) operate in all areas of the State and
17 not duplicate the geographical coverage of other
18 one-call notification systems;

19 (C) receive and record appropriate infor-
20 mation from excavators about intended exca-
21 vations;

22 (D) inform facility operators of any in-
23 tended excavations that may be in the vicinity
24 of their underground facilities; and

1 (E) inform excavators of the identity of fa-
2 cility operators who will be notified of the in-
3 tended excavation;

4 (2) provide for 24-hour coverage for emergency
5 excavation, with the manner and scope of coverage
6 determined by the State;

7 (3) employ mechanisms to ensure that the gen-
8 eral public, and in particular all excavators, are
9 aware of the one-call telephone number and the re-
10 quirements, penalties, and benefits of the State pro-
11 gram relating to excavations;

12 (4) inform excavators of any procedures that
13 the State has determined must be followed when ex-
14 cavating;

15 (5) require that any excavator contact the one-
16 call notification system in accordance with State
17 specifications, which may vary depending on whether
18 the excavation is short term, long term, routine, con-
19 tinuous, or emergency;

20 (6) require facility operators to provide for lo-
21 cating and marking or otherwise identifying their fa-
22 cilities at an excavation site, in accordance with
23 State specifications, which may vary depending on
24 whether the excavation is short term, long term, rou-
25 tine, continuous, or emergency;

1 (7) provide effective mechanisms for penalties
2 and enforcement as described in section 6;

3 (8) provide for a fair and appropriate schedule
4 of fees to cover the costs of providing for, maintain-
5 ing, and operating the State program;

6 (9) provide an opportunity for citizen suits to
7 enforce the State program;

8 (10) require railroads to report any accidents
9 that occur during or as a result of routine railroad
10 maintenance to the Secretary and the appropriate
11 local officials; and

12 (11) provide that when a facility operator be-
13 lieves that its underground facility is not buried 3
14 feet or lower on railroad property or right-of-way,
15 the facility operator may request permission to enter
16 the railroad property or right-of-way for the purpose
17 of assessing the depth of such underground facility
18 and report its finding to the railroad.

19 (b) EXCEPTION.—When excavation is undertaken by
20 or for a person on real property that is owned or leased
21 by, or in which an oil or gas mineral leasehold interest
22 is held by, that person, and that person operates all under-
23 ground facilities located at the site of the excavation, a
24 State program may elect not to require that such person

1 contact the one-call notification system before conducting
2 excavation.

3 **SEC. 6. PENALTIES AND ENFORCEMENT.**

4 (a) GENERAL PENALTIES.—Each State's consider-
5 ation under section 4(a) shall include consideration of a
6 requirement that any excavator or facility operator that
7 violates the requirements of the State program shall be
8 liable for an appropriate administrative or civil penalty.

9 (b) INCREASED PENALTIES.—If a violation results in
10 damage to an underground facility resulting in death, seri-
11 ous bodily harm, or actual damage to property exceeding
12 \$50,000, or damage to a hazardous liquid underground
13 facility resulting in the release of more than 50 barrels
14 of product, the penalties shall be increased, and an addi-
15 tional penalty of imprisonment may be assessed for a
16 knowing and willful violation.

17 (c) DECREASED PENALTIES.—Each State's consider-
18 ation under section 4(a) shall include consideration of re-
19 duced penalties for a violation, that results in or could re-
20 sult in damage, that is promptly reported by the violator.

21 (d) EQUITABLE RELIEF AND MANDAMUS AC-
22 TIONS.—Each State's consideration under section 4(a)
23 shall include consideration of provisions for appropriate
24 equitable relief and mandamus actions.

1 (e) IMMEDIATE CITATION OF VIOLATIONS.—Each
2 State’s consideration under section 4(a) shall include con-
3 sideration of procedures for issuing a citation of violation
4 at the site and time of the violation.

5 **SEC. 7. GRANTS TO STATES.**

6 (a) AUTHORITY.—

7 (1) FUNDING.—Using \$4,000,000 of the
8 amounts previously collected under section 7005 of
9 the Consolidated Omnibus Budget Reconciliation Act
10 of 1985 (previously codified as 49 U.S.C. App.
11 1682a) or section 60301 of title 49, United States
12 Code, for each of the fiscal years 1996, 1997, and
13 1998, to the extent provided in advance in appro-
14 priations Acts, the Secretary shall make grants to
15 States, or to operators of one-call notification sys-
16 tems in such States, that have elected to adopt a
17 State program described in section 5 or to establish
18 and maintain a State program pursuant to sub-
19 section (b) of this section.

20 (2) GENERAL PURPOSES.—Grants under sub-
21 section (a) may be used in—

22 (A) establishing one-call notification sys-
23 tems;

24 (B) modifying existing systems to conform
25 to standards established under this Act; and

1 (C) improving systems to exceed those
2 standards.

3 (3) PARTICULAR USES.—Grants under sub-
4 section (a) may be used to—

5 (A) improve communications systems link-
6 ing one-call notification systems;

7 (B) improve location capabilities, including
8 training personnel and developing and using lo-
9 cation technology;

10 (C) improve record retention and recording
11 capabilities;

12 (C) enhance public information and edu-
13 cation campaigns;

14 (E) increase and improve enforcement
15 mechanisms, including administrative process-
16 ing of violations; and

17 (F) otherwise further the purposes of this
18 Act.

19 (b) ALTERNATE FORM OF STATE PROGRAM.—The
20 Secretary may make a grant under subsection (a) to a
21 State that establishes or maintains a State program that
22 differs from a State program described in section 5 if the
23 State program is at least as protective of the public health
24 and safety and the environment as a State program de-
25 scribed in section 5.

1 **SEC. 8. DEPARTMENT OF TRANSPORTATION.**

2 (a) COORDINATION WITH OTHER RESPONSIBIL-
3 ITIES.—

4 (1) COORDINATION.—The Secretary shall co-
5 ordinate the implementation of this Act with the im-
6 plementation of chapter 601 of title 49, United
7 States Code.

8 (2) REVIEW OF PROGRAMS.—Within 18 months
9 after the date of enactment of this Act, the Sec-
10 retary shall review, and report to Congress on, the
11 extent to which any policies, programs, and proce-
12 dures of the Department of Transportation could be
13 used to achieve the purposes of this Act.

14 (b) MODEL PROGRAM.—

15 (1) DEVELOPMENT.—

16 (A) INITIAL MODEL PROGRAM.—Within 1
17 year after the date of enactment of this Act, the
18 Secretary, in consultation with facility opera-
19 tors, excavators, one-call notification system op-
20 erators, and State and local governments, shall
21 develop and make available to States a model
22 State program, including a model enforcement
23 program.

24 (B) AMENDMENTS.—The model program
25 may be amended by the Secretary on the Sec-
26 retary's initiative or in response to reports sub-

1 mitted by the States pursuant to section 9 or
2 as a result of workshops conducted under para-
3 graph (3).

4 (2) MANDATORY ELEMENTS.—The model pro-
5 gram developed under paragraph (1) shall include all
6 elements of a State program described in section 5.

7 (3) OTHER ELEMENTS.—The Secretary shall
8 consider incorporating the following elements into
9 the model program:

10 (A) RECORDATION OF INFORMATION.—

11 The one-call notification system or systems
12 shall—

13 (i) receive and record appropriate in-
14 formation from excavators about intended
15 excavations, including—

16 (I) the name of the person con-
17 tacting the one-call notification sys-
18 tem;

19 (II) the name, address, and tele-
20 phone number of the excavator;

21 (III) the specific location of the
22 intended excavation, along with the
23 starting date thereof and a description
24 of the intended excavation activity;
25 and

1 (IV) the name, address, and tele-
2 phone number of the person for whom
3 the work is being performed; and

4 (ii) maintain records on each notice of
5 intent to excavate for the period of time
6 necessary to ensure that such records re-
7 main available for use in the adjudication
8 of any claims relating to the excavation.

9 (B) PROVISION OF INFORMATION.—The
10 provision of information on excavation require-
11 ments at the time of issuance of excavation or
12 building permits, or other specific mechanisms
13 for ensuring excavator awareness.

14 (C) ADVANCE CONTACT.—A requirement
15 that any excavator must contact the one-call
16 notification system at least 2 business days,
17 and not more than 10 business days, before ex-
18 cavation begins.

19 (D) ALTERNATIVE NOTIFICATION PROCE-
20 DURES.—Alternative notification procedures for
21 excavation activities conducted as a normal part
22 of continuing operations within specific geo-
23 graphic locations over an extended period of
24 time.

1 (E) MARKING OF FACILITIES; MONITORING
2 OF EXCAVATION.—A requirement that facility
3 operators—

4 (i) provide for locating and marking,
5 in accordance with the American Public
6 Works Association Uniform Color Code for
7 Utilities, or otherwise identifying, in ac-
8 cordance with standards established by the
9 State or the American National Standards
10 Institute, their underground facilities at
11 the site of an intended excavation within
12 no more than 2 business days after notifi-
13 cation of such intended excavation; and

14 (ii) monitor such excavation as appro-
15 priate.

16 (F) NOTIFICATION OF NO UNDERGROUND
17 FACILITIES.—Provision for notification of exca-
18 vators if no underground facilities are located
19 at the excavation site.

20 (G) LONGER TIME LIMITATIONS.—Provi-
21 sion for the approval of a State program under
22 this Act with time limitations longer than those
23 required under subparagraphs (C) and (E) of
24 this paragraph where special circumstances,

1 such as severe weather conditions or remoteness
2 of location, pertain.

3 (H) UNKNOWN LOCATIONS.—Procedures
4 for excavators and facility operators to follow
5 when the location of underground facilities is
6 unknown.

7 (I) IMPROVEMENT OF CAPABILITIES.—Pro-
8 cedures to improve underground facility location
9 capabilities, including compiling and notifying
10 excavators, facility operators, and one-call cen-
11 ters of any information about previously un-
12 known underground facility locations when such
13 information is discovered.

14 (J) ALTERNATIVE RULES FOR TIMELY
15 COMPLIANCE.—Alternative rules for timely com-
16 pliance with State program requirements in
17 emergency circumstances.

18 (K) REVOCATION OF LICENSES AND PER-
19 MITS.—If a State has procedures for licensing
20 or permitting entities to do business, procedures
21 for the revocation of the license or permit to do
22 business of any excavator determined to be a
23 habitual violator of the requirements of the
24 State program.

1 (4) WORKSHOPS.—Within 6 months after the
2 date of enactment of this Act, and annually there-
3 after, the Secretary shall conduct workshops with fa-
4 cility operators, excavators, one-call notification sys-
5 tem operators, and State and local governments in
6 order to develop, amend, and promote the model
7 program, and to provide an opportunity to share in-
8 formation among such parties and to recognize State
9 programs that exemplify the goals of this Act.

10 (c) PUBLIC EDUCATION.—The Secretary shall de-
11 velop, in conjunction with facility operators, excavators,
12 one-call notification system operators, and State and local
13 governments, public service announcements and other edu-
14 cational materials and programs to be broadcast or pub-
15 lished to educate the public about one-call notification sys-
16 tems, including the national phone number.

17 **SEC. 9. STATE REPORTS.**

18 (a) REQUIREMENT.—

19 (1) INITIAL REPORT.—Within 3 years after the
20 date of enactment of this Act, each State shall sub-
21 mit to the Secretary a report on progress made in
22 implementing this Act.

23 (2) STATUS REPORTS.—Within 4½ years after
24 the date of enactment of this Act, and annually
25 thereafter, each State shall report to the Secretary

1 on the status of its State program, if any, and its
2 requirements, and any other information the Sec-
3 retary requires.

4 (b) SIMPLIFIED REPORTING FORM.—Within 3 years
5 after the date of enactment of this Act, the Secretary shall
6 develop and distribute to the States a simplified form for
7 complying with the reporting requirements of subsection
8 (a)(2).

9 **SEC. 10. FEDERAL REPORT.**

10 The Secretary shall report annually to Congress on
11 the number and circumstances surrounding accidents
12 caused by routine railroad maintenance.

13 **SEC. 11. MORE PROTECTIVE SYSTEMS.**

14 Nothing in this Act prohibits a State from imple-
15 menting a one-call notification system that provides great-
16 er protection for underground facilities from damage due
17 to excavation than a system established pursuant to this
18 Act.

19 **SEC. 12. USE OF TECHNOLOGIES FOR REMOTE AND ABOVE-**
20 **GROUND PIPELINE LOCATION.**

21 The Secretary shall consult with other agencies as to
22 the availability and affordability of technologies which will
23 help relocate pipelines from above-ground and remote loca-
24 tions.

